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January 25, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S. W.
TW-A325
Washington, DC 20554

Re: Notice of Proposed Rulemaking - In the Matter of 1998 Biennial Regulatory Review - Spectrum Aggregation Limits for Wireless Telecommunications Carriers - WT Docket 98-205

Dear Ms. Salas:

Transmitted herewith, on behalf of Telephone and Data Systems, Inc. and its subsidiaries, Aerial Communications, Inc. and United States Cellular Corporation, are an original and four copies of its comments in the above-referenced matter.

Electronic copies of the foregoing comments on 3.5 inch diskettes are also being provided to the Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau and to the International Transcription Service, Inc.

In the event there are any comments or questions concerning this matter, please direct them to the undersigned.

Very truly yours,

George Y. Wheeler

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -	)	WT Docket No. 98-205
Spectrum Aggregation Limits for	)	
Wireless Telecommunications Carriers	)	
	)	
Cellular Telecommunications Industry	)	
Association's Petition for Forbearance	)	
From the 45 MHZ CMRS Spectrum Cap	)	
	)	
Amendment of Parts 20 and 24 of the	)	WT Docket No. 96-59
Commission's Rules -- Broadband PCS	)	
Competitive Bidding and the Commercial	)	
Mobile Radio Service Spectrum Cap	)	
	)	
Implementation of Sections 3(n) and	)	GN Docket No. 93-252
332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

COMMENTS OF
TELEPHONE AND DATA SYSTEMS, INC.

Telephone and Data Systems, Inc., on behalf of itself and its subsidiaries, Aerial Communications, Inc. ("Aerial")[1] and United States Cellular Corporation ("USCC")[2] (collectively "TDS"), by its attorneys, submits its comments in response to the Commission's Notice of Proposed

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[1] Aerial provides PCS service in the Minneapolis, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus Major Trading Areas ("MTAs"). These MTA markets have a combined population of approximately 27.6 million.

[2] USCC provides cellular telephone service to approximately two million customers through 136 majority-owned and managed cellular systems serving approximately 17% of the land area and approximately 9% of the population of the United States (approximately 24.1 million people).

Rulemaking ("NPRM"), released December 10, 1998 in the above-captioned proceeding.

Introduction

TDS has long supported the Commission's initiatives to promote a broadly competitive CMRS marketplace. In response to the Commission's Notice of Proposed Rulemaking released March 20, 1996 in WT Docket No. 96-59, TDS advocated that the basic structure of the Commission's spectrum cap rules be retained to optimize and balance four essential goals -- universality, speed of deployment, diversity of service offerings and competitive delivery of wireless services. As discussed below, TDS again submits that the Commission's spectrum cap rules in Section 20.6 of the Commission's rules should be retained, without modification, because they are still needed to foster the public benefits which the foregoing goals are intended to achieve and to avoid unfairness to numerous PCS licensees like TDS who have made long term financial and other commitments in reliance on competitive opportunities made possible by those rules. The only area which requires change is the relaxation of the Commission's related Section 22.942 prohibition on a party which controls a cellular license in one market having any interest, including a non-controlling interest, in the other cellular license in that market. This prohibition should be amended to include in Section 22.942 the same ownership attribution standards now set forth in Section 20.6(d) of the Commission's rules.

Discussion

1. The Commission Should Retain All the Current CMRS Spectrum Cap Limits in Section 20.6 of its Rules.

TDS strongly supports retention of the Commission's current spectrum cap limits in Section 20.6 of its rules. The current rule, as most recently modified in 1996, reflects the complex balancing

of numerous competing interests which continue to affect licensee decisions regarding coverage, speed of deployment, service options, pricing, technology choice and other competitive market conditions. The voluminous record documenting anticipated public benefits in the rulemaking proceedings leading up to the adoption of the current rule has been validated by subsequent events. Rather than repeal or relax the current spectrum cap limits, the Commission should retain those limits so that the new entrants like TDS who acquired PCS spectrum will have adequate time to extend and enhance the public benefits which are described in the Commission's Third Annual CMRS Competition Report.[3]

The fact that the Commission has documented some progress toward its pro-competitive goals, particularly reflecting the initial deployment of broadband PCS Block A and B networks, does not support the replacement of current spectrum cap limits in favor of less restrictive measures. As the Commission's Third Annual CMRS Competition Report[4] makes clear, there are large areas of the U.S. in which PCS and enhanced SMR network deployments have not occurred, even among the broadband PCS Block A and B licensees. The broadband PCS licenses for the C Block have been subject to considerable uncertainty pending the resolution of installment payment financing issues so that relatively few of these have progressed beyond the initial phases of their network buildouts. Similarly broadband PCS Blocks D, E and F licenses are only just beginning to be deployed. Those numerous new entrants who successfully bid for broadband PCS spectrum and account for a high percentage of the total licenses available to new entrants have not had a realistic opportunity to

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[3] Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report, 12 CR 623, 663 (1998).

[4] Id., 12 CR, at 644-645.

establish competitive networks. It would be grossly unfair to these licensees and to the public they intend to serve to change these spectrum cap rules so as to diminish the competitive diversity which these new entrants potentially bring to the CMRS wireless industry.

The Commission also should consider the impact upon potential bidders for the remaining broadband PCS licenses (approximately 450 such licenses) in blocks C, D, E and F in its auction scheduled to start March 23, 1999. The Commission should not change the fundamental structure of CMRS wireless competition by replacing or otherwise altering its spectrum cap limits before initial PCS deployment of these remaining licenses has been completed. Here, as above, it would be grossly unfair to both winning and losing bidders in prior PCS auctions as well as potential new entrants to alter current spectrum cap limits for the deployment of new PCS services.

Adoption of substantial changes in the Commission's spectrum cap limits would also be fundamentally unfair to companies such as TDS who selected PCS markets on which to bid, paid to the U.S. Treasury substantial winning bid amounts, divested/restructured numerous cellular interests and made numerous technology and other choices in the deployment of extensive new PCS networks, which choices were required by or directly responsive to the competitive structure of the wireless industry permitted under the Commission's current rules. TDS and other bidders reasonably relied on the expectation that these limits would continue to shape the competitive opportunities for all entrants in this new industry. The Commission should not upset the established structure of the wireless industry by changing its spectrum cap limits while the business plans undertaken by TDS and numerous other new PCS entrants are still in their early stages and are largely incomplete.

2. The FCC Should Leave Section 22.942 In Place But Conform its Attribution Rules to The Section 20.6 Standard.

As an additional safeguard for local competition, TDS also supports retention of a modified version of Section 22.942 of the FCC's Rules. At present, that rule prohibits any person from having a direct or indirect ownership interest in the cellular licenses on both channel blocks in a single market, where such interests will have an adverse impact on competition. Non-controlling interests of less than 5% in each licensee are permitted, as are other non-controlling interests in both licensees on a case by case basis. However, parties with a controlling interest in one license are forbidden to hold any interest in the other licensee in the same market.

As is noted in the NPRM, the cellular cross interest rule was adopted in 1991 when cellular carriers were the "predominant providers of mobile voice services."[5]

In order to make certain that the cellular industry would remain competitive in a duopoly environment, the Commission adopted the predecessor rule to Section 22.942, by which it sought to ensure that the licensee on one frequency block should not own an interest in the other frequency block in the same market.[6]

TDS believes that there are still valid reasons to have a rule which prohibits one person from controlling both cellular licensees in the same market, regardless of whatever action the Commission may take with respect to the spectrum cap. First, there is no conceivable situation in which the

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[5] NPRM, at ¶80.

[6] Amendment of Part 22 of the Commission's Rules to Provide for the Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules, CC Docket Nos. 90-6, 85-388, First Report and Order and Memorandum Opinion and Order On Reconsideration, FCC Rcd 6185,6228-29 (1991).

public would be better served in a given market by having a monopoly cellular provider than by having competition in the provision of cellular service. Second, as is noted in the NPRM (¶83), there are still many cellular markets, particularly in rural areas, where no PCS carrier has initiated service. In such markets, a prohibition on a cellular monopoly is still a valuable competitive safeguard, as it was in 1991.

The FCC should, however, recognize that there have been significant changes in the wireless market structure since 1991, namely the emergence of PCS and ESMR services in much of the country, which do justify a relaxation of Section 22.942's most restrictive aspect, the rule's prohibition on a party which controls a licensee in one market having any interest, including a non-controlling interest, in the other cellular licensee in that market. That prohibition can be modified by incorporating "attribution" standards defining the "ownership interests" covered by the rule. Interests which are deemed non-attributable would be permitted. TDS would propose that Section 22.942 be amended to include the same ownership "attribution rules" now set forth in Section 20.6(d).

In 1994, in adopting Section 20.6(d), the FCC established a reasonable balance between the equally desirable goals of free trade in CMRS interests and the preservation of intra-market competition.[7] For example, in Sections 20.6(c) and (d), the Commission decided that it would actually serve the pro-competitive purpose of the rule to permit a cellular-PCS cross-ownership of

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[7] See, In the Matter of Implementation of Sections 3(n) and 332 of The Communications Act, Third Report and Order, 76 R.R. 2d 326, 381-384 (1994).

up to 20% in overlapping service areas.[8]

It would make sense to reflect that same balance in the cellular cross interest rule. The same considerations which led the FCC in 1994, not to impose in Section 20.6 a ban on cross-ownerships between controlling and non-controlling interests, namely a desire to foster wireless transactions which may involve some incidental cross-ownerships of that type, also now support a modification of Section 22.942. Moreover, if the evolution of wireless market in the future should support a relaxation in the attribution limits of Section 20.6(d), those changes could also be reflected in Section 22.942. Such changes could be made in both rules without losing the benefits of the basic principle that cellular and broadband PCS licensees with significantly overlapping service areas ought to be independently controlled.

Conclusion

The Commission should retain its established spectrum cap limits to foster the expansion and enhancement of competition in the wireless industry. In fairness to the numerous companies like TDS who have made substantial long term financial commitments to acquire PCS licenses and to deploy PCS networks, the Commission should continue its consistent and even-handed application of the Commission's spectrum cap rules. Considering the anticipated public benefits as these new networks are deployed and expanded, it is too soon to contemplate less restrictive alternatives to the current limits. The biennial review process will provide future opportunities to consider the many alternatives to the current spectrum cap limits when the CMRS wireless industry has had an adequate opportunity to mature. The limited amendment to Section 22.942 should be adopted to permit cross-

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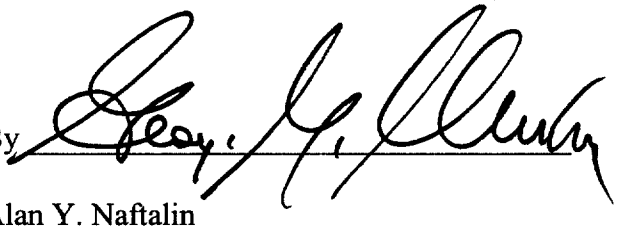
[8] Id., 76 RR 2d, at 387-388.

ownerships between controlling and non-controlling interests on the same basis as they are permitted for the PCS and enhanced SMR licensees subject to Section 20.6.

Respectfully submitted,

TELEPHONE AND DATA SYSTEMS, INC.

By 

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January 25, 1999